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Re: Energy Labeling Rule (16 CFR Part 305) (Matter No. R611004)

21 December 2022

Hampton Newsome Attorney, Division of Enforcement Bureau of Consumer Protection Federal Trade Commission 600 Pennsylvania Ave., NW Washington, DC 20580

## Dear Hampton Newsome:

We at Software Freedom Conservancy ("Conservancy") are writing in support of requiring manufacturers to provide "repair instructions" through a notice on the EnergyGuide label. Software Freedom Conservancy is a nonprofit charity centered around ethical technology. Our mission is to ensure the right to repair, improve and reinstall software. This comment is prepared primarily by Denver Gingerich, Conservancy's Director of Compliance, who has over 11 years of experience at Conservancy triaging, reviewing, and improving manufacturers' software repair instructions.

Many products covered by the FTC's Energy Labeling Rule already have software installed on them that can be modified by the consumer, for the purposes of maintenance and repair, and also to improve their use of the product. Manufacturers have chosen to include this software because the software's versatility makes it easier for manufacturers to integrate into their products than software that cannot be modified. An example of such versatile software is Linux, used in televisions, clothes washers, refrigerators, and many other product categories.

Linux, and many other software programs, are provided to manufacturers on the condition that manufacturers pass on the "source code" (which, for software, is what is required for maintenance and repair of that software) for the program to the consumer. This condition is codified in copyright licenses such as the General Public License (licenses that impose these kinds of reciprocal requirements are called "copyleft" licenses). While these licenses do require that manufacturers provide consumers with the source code or "a written offer ... to give any third party ... a complete machine-readable copy of the corresponding source code", this source code or written offer is often buried deep in the back pages of a manual. Our experience has shown that this makes it less likely for consumers to know they have repair information for the software in their device, and reduces the chance that repair organizations will materialize for a given product line.

When consumers are aware of this software maintenance and repair information, it often leads to consumers taking collective action and creating repair groups to help each other repair and improve the products they've purchased. For example, the SamyGO project allows consumers to continue using up-to-date software on their Samsung televisions long after Samsung has stopped supporting these televisions. An example list of televisions supported by SamyGO can be found at https://wiki.samygo.tv/index.php?title=Compatibility

Further inspiration for what can be achieved when users are aware of the software repair instructions available for their devices can be found in LineageOS, a project that gives old Android smartphones up-to-date software long after the manufacturers have stopped supporting it. Because Android's "open source" branding makes

consumers more likely to check for the software repair instructions for their device, projects like LineageOS can maintain support for a much wider range of devices, for a longer period of time, due to more interest and available volunteers to help with the project. While smartphones are not in the FTC's current or proposed product categories for the Energy Labeling Rule, the LineageOS project is an excellent example of what is possible when consumers are aware of the software repair instructions available to them.

With this in mind, Software Freedom Conservancy recommends to the FTC, per §III.C. ("Repair Instructions") of its request for comment, that the Energy Labeling Rule be updated to require manufacturers of any covered product to provide "a written offer" for source code on the EnergyGuide label if that product has any software installed on it that is covered by the General Public License, Lesser General Public License, or any other license that requires source code be made available (see the additional examples mentioned at https://en.wikipedia.org/wiki/Category:Copyleft\_software\_licenses for further details) and to recommend that companies voluntarily include a written offer for non-copylefted software as well. Here is a template for "a written offer" of this type:

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## Software Repair Instructions

This product contains free and open source software. Instructions for repairing the software are available in this product's source code, which is available by entering the product's model number on this web site:

[URL]

- OR -

## Software Repair Instructions

This product does not include software repair instructions. The manufacturer attests that no software used in this device has software repair requirements.

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The above template is based on existing text used by manufacturers when they provide "a written offer". See the attached product manuals, which include such text, in the "open source" sections on page 15 of samsung-wf46bg6500avus\_manual.pdf (clothes washer) and page 41 of lg-lrfvc2406s\_manual.pdf (refrigerator), and in the "notices and licenses" section at the end of page 1 in sony-kdl\_48w600b\_manual.pdf (television).

While we at Software Freedom Conservancy advocate for software repair across all devices, we are aware of strong industry opposition to a requirement for such repair requirements. As a result, for this comment period, we are only requesting the prominent display of notices that the manufacturer is already required to include, while also providing consumers with a clear indication if no software repair instructions are provided (only in the case where the manufacturers did not use software whose licenses require such instructions). We recommend the FTC also consider similar labeling for hardware repair instructions, but defer to other organizations (those specializing in hardware repair) as to specific labeling suggestions.

We believe consumers will prefer devices that include software repair instructions, and will use the EnergyGuide label (if it were to include a template similar to our suggestion above) to determine which devices provide them with such instructions, as it is easy to find, and provides clear and concise information that can be directly compared with similar devices.

Additionally, showing consumers that software repair instructions are available while they are browsing a product category can increase their chance of asking the manufacturer for these software repair instructions, which in turn increases the chance of new software repair projects taking off. As we have learned from SamyGO, LineageOS, and many others, such software repair projects not only allow consumers to repair devices that have broken software, but also let them continue using the device for many more years than would otherwise be possible.

With the increased complexity of software on today's products, we find that usually the hardware outlives

the software (which stops receiving updates from the manufacturer). But we can keep that hardware useful much longer if consumers know about, and are provided with, software repair instructions, keeping more products out of landfills, and reducing our impact on the environment.

Software Freedom Conservancy thanks the FTC for accepting comments on these matters, and is happy to further discuss any topics, including any potential modifications to the suggested Software Repair Instructions template. We want consumers to be properly informed, and be able to access and make use of the repair instructions that manufacturers are already required to provide.

Sincerely,

Denver Gingerich

Director of Compliance

Software Freedom Conservancy